Filed 12/8/16 The Inland Oversight Committee v. Yates CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE INLAND OVERSIGHT COMMITTEE,

Plaintiff and Appellant,

v.

DENNIS YATES et al.,

Defendants and Respondents.

E064787

(Super.Ct.No. CIVDS1314931)

OPINION

APPEAL from the Superior Court of San Bernardino County. Donald R. Alvarez, Judge. Dismissed.

Briggs Law Corporation, Cory J. Briggs and Anthony N. Kim, for Plaintiff and Appellant.

Larson O'Brien, Stephen G. Larson and Jonathan E. Phillips, for Defendants and Respondents.

Plaintiff and appellant The Inland Oversight Committee is, according to its complaint, a nonprofit organization with at least one member who "resides in and pays

real-property taxes within the geographical jurisdiction of the City of Chino," and has an interest in "ensuring that City's public officials comply with all conflict-of-interest and public-contract laws and maintaining open, transparent government decision-making." (Some capitalization omitted.) Defendants and respondents Dennis R. Yates, Glenn Duncan, Earl C. Elrod, Tom Haughey, Eunice M. Ulloa, and Rob Burns are public officials for the City of Chino, specifically, members of the city council, and its director of finance.[1]

This is the second appeal arising out of the present lawsuit. In the first, we affirmed the trial court's ruling granting defendants' special motion to strike the first amended complaint (FAC) as a strategic lawsuit against public participation (anti-SLAPP motion) pursuant to Code of Civil Procedure section 425.16[2] (the anti-SLAPP statute). (*The Inland Oversight Committee v. Yates* (May 13, 2016, E063644 [nonpub.opn.].) Here, we consider plaintiff's challenge to the trial court's order awarding defendants $15,000 in sanctions, payable by plaintiff's counsel, Cory J. Briggs, pursuant to section 128.7.

For the reasons stated below, plaintiff's appeal will be dismissed.

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[1] Several other parties were also named as defendants. In this opinion, except where indicated, we use the term "defendants" to refer to those defendants who are also respondents in the present appeal.

[2] Further undesignated statutory references are to the Code of Civil Procedure

I. FACTS AND PROCEDURAL BACKGROUND

At the heart of this dispute is a contract entitled "Agreement for City Attorney Services," which the City of Chino (City) entered into with attorneys Jimmy L. Gutierrez, Arturo N. Fierro, and James E. Erickson, and their law firm (city attorney defendants). The contract provides on its face that it is to continue in effect for a term of one year from its effective date of July 1, 2006, renewing for an additional one-year term annually, unless the city council issues written notice that the contract will not renew. Plaintiff's lawsuit rests on the notion that a provision of the Chino Municipal Code applies to limit the maximum term of the agreement to three years, meaning that it expired "on or before October 17, 2009."[3] On this basis, plaintiff alleged any money paid by the City pursuant to the contract after that date was unlawful, and that in approving any such payments defendants "were knowingly and intentionally acting ultra vires." (Italics omitted.)

Plaintiff's initial complaint in this action, filed December 13, 2013, is entitled "Complaint to Prevent and Cure Public Officials'' Knowing, Intentional, and Illegal Disbursements of Taxpayer Funds and Other Taxpayer Waste." The complaint alleges a single cause of action for "Illegal Payments of Taxpayer Funds." The defendants named in the complaint include the public officials listed above, as well as the city attorney defendants.

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[3] Although the contract's effective date was July 1, 2006, the printed language of the contract states that it was executed on October 3, 2006, and the city clerk's handwritten attestation is dated October 18, 2006

The FAC, filed April 30, 2014, is entitled "First Amended Complaint Under the California Public Records Act and to Prevent and Cure Public Officials' Knowing, Intentional, and Illegal Disbursements of Taxpayer Funds and Other Taxpayer Waste." The FAC adds the City as a defendant, and adds a second cause of action, asserted only against the City, for "Violation of the California Public Records Act." The record request underlying the second cause of action was made "[o]n behalf of CREED-21," an organization that is not a party to the action.

On October 31, 2014, the trial court sustained the city attorney defendant's demurrer to the first amended complaint without leave to amend. On the same date, the trial court sustained a demurrer to the FAC brought by defendants, denying leave to amend with respect to the first cause of action, but allowing leave to amend with respect to the second cause of action, to add CREED-21 as a plaintiff. However, the second amended complaint, filed on December 5, 2014, was subsequently stricken in its entirety by the trial court as untimely filed, without leave to amend.

On September 10, 2014, defendants served plaintiff with a motion for sanctions pursuant to section 128.7, which was filed on November 20, 2014, after the statutory safe harbor period. (§ 128.7, subd. (c)(1).) The trial court issued an order granting the motion on March 27, 2015, but leaving the amount to be determined at a later date.[4]

[4] The trial court's March 27, 2015, order also addresses defendants' anti-SLAPP motion, which was the subject of our opinion in the prior appeal arising from this lawsuit. (See *The Inland Oversight Committee v. Yates, supra*, E063644.)

After further briefing and oral argument on the issue, the trial court imposed $15,000 in sanctions against plaintiff's counsel pursuant to section 128.7.[5] A notice of appeal was subsequently filed, but only on behalf of plaintiff; no notice of appeal was filed on behalf of plaintiff's counsel, and plaintiff's counsel is not named as an additional party in plaintiff's notice of appeal.

II. DISCUSSION

A. Plaintiff Lacks Standing to Challenge the Sanctions Imposed Solely Against Plaintiff's Counsel.

Defendants note that the trial court's sanctions order imposes sanctions only on plaintiff's counsel, but plaintiff's counsel is not named as an appellant on the notice of appeal, or in other documents filed by plaintiff in this court. They argue on that basis that the appeal should be dismissed, because plaintiff lacks standing to challenge the award of sanctions, and plaintiff's counsel is not a party to the appeal. We agree.

"Subdivision (k) of section 904.1 authorizes an appeal of a sanction ruling by the party against whom the sanctions were imposed." (*Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39, 42 (*Calhoun*).) Absent any attempt to appeal by the sanctioned party, the sanction ruling is not reviewable. (*Ibid.*) Similarly, when a sanctions order is imposed jointly upon both an attorney and a client, but only the client appeals, the court lacks jurisdiction to review the sanctions order as to the attorney.

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[5] The trial court also awarded defendants $10,734.13 as the prevailing parties on their anti-SLAPP motion. No claim of error with respect to that award has been raised on appeal.

(*Laborde v. Aronson* (2001) 92 Cal.App.4th 459, 465, disapproved on other grounds by *Musaelian v. Adams* (2009) 45 Cal.4th 512; *Taylor v. Varga* (1995) 37 Cal.App.4th 750, 761 & fn. 12 (*Taylor*).) Applying this authority, plaintiff's appeal of an order imposing sanctions against plaintiff's counsel should be dismissed.

In arguing for a different result, plaintiff points to *Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967, 974 (*Eichenbaum*) and the primary authority on which the *Eichenbaum* opinion rests, *Kane v. Hurley* (1994) 30 Cal.App.4th 859, 861, footnote 4 (*Kane*). In *Eichenbaum*, sanctions were ordered jointly against the plaintiff and the plaintiff's attorney, but a notice of appeal was filed only on behalf of the plaintiff. *Eichenbaum* reasoned that based on "the doctrine of liberal construction of a notice of appeal" (see Cal. Rules of Court, rule 8.100(a)(2)), it would "deem[] a notice that named only a party to include his attorney, who had filed the notice and against whom the sanctions had been assessed." (*Eichenbaum, supra*, at p. 974.) In doing so, *Eichenbaum* rejected *Taylor, supra*, 37 Cal.App.4th at page 761, and purported to follow the approach of *Kane, supra*, at page 861, footnote 4. (*Eichenbaum, supra*, at p. 974.)

Plaintiff's argument is not persuasive, because *Kane* is distinguishable on its facts from the present case, while *Eichenbaum* rests on a shaky analytical foundation, in addition to being distinguishable on its facts. First, although *Eichenbaum* purports to rely on *Kane*, *Kane* does not support *Eichenbaum*'s holding. *Kane* stated that "[t]he notice of appeal was filed by appellant *on behalf of* [the attorney]." (*Kane, supra*, 30 Cal.App.4th at p. 861, fn. 4, italics added.) In other words, the attorney in *Kane* was named as a party in the notice appeal, but had not filed a separate notice of appeal. In contrast, the attorney

in *Eichenbaum*, like plaintiff's counsel in the present case, was not named as a party in the notice of appeal. (*Eichenbaum, supra*, 106 Cal.App.4th at p. 974.) The doctrine of liberally construing the notice of appeal is not properly applied in such circumstances. (See *Calhoun, supra*, 20 Cal.App.4th at p. 42 ["Had [plaintiff's attorney] included himself as an additional appellant in [plaintiff's] notice of appeal, we could have liberally construed the notice of appeal in favor of its sufficiency [citations], but [plaintiff's attorney] did not do so."].)

Second, *Eichenbaum*'s holding does not apply to the present case because the sanctions order at issue in *Eichenbaum* applied jointly to the plaintiff and its attorneys. (*Eichenbaum, supra*, 106 Cal.App.4th at p. 973.) The court of appeal in *Eichenbaum* was able to consider the merits of the joint sanctions award because the plaintiff had filed a proper notice of appeal, even though the plaintiff's counsel had not. Here, in contrast, sanctions were imposed only on plaintiff's counsel, and not on plaintiff.

In short, plaintiff lacks standing to challenge the sanctions order, because sanctions were awarded only against plaintiff's counsel. Because plaintiff's counsel did not file a separate notice of appeal and was not named as a party in plaintiff's notice of appeal, we are without jurisdiction to review the sanctions order.[6]

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[6] In light of our conclusions here, detailed discussion of the merits of the sanctions order is unnecessary. We find it appropriate to note briefly, however, that if we were to reach the merits, we would affirm the trial court's order. The trial court did not abuse its discretion in finding the legal basis of plaintiff's first cause of action to be objectively unreasonable or in determining the amount of sanctions. Furthermore, plaintiff's public policy argument is unpersuasive, and plaintiff's counsel's due process rights were not violated.

III. DISPOSITION

Plaintiff's appeal is dismissed. Defendants are awarded costs on appeal.

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HOLLENHORST
Acting P. J.

We concur:

MCKINSTER
J.

SLOUGH
J.